

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

KEVIN MULKERN,

Plaintiff,

-against-

LOWES HOME CENTER, LLC,

Defendant.

23-CV-7362 (LTS)

ORDER OF DISMISSAL

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff brings this action *pro se*, asserting claims under the Court's federal question and diversity jurisdiction in connection with the termination of his employment with Lowe's Home Center, LLC. The Court dismisses the complaint without prejudice for the following reason.

Plaintiff has already brought an against Defendant Lowes Home Center, LLC, asserting substantially the same claims in connection with the termination of his employment in October 2020. Plaintiff filed that action in state court, and Defendant Lowes Home Center, LLC, removed it to this court, where it remains pending, *Mulkern v. Lowes, Inc.*, No. 7:23-CV-3689 (KMK) (S.D.N.Y.). Because this complaint raises the same claims that are already pending in this district, Plaintiff cannot pursue this duplicate lawsuit.<sup>1</sup> Therefore, this complaint is dismissed without prejudice to Plaintiff's pending case under docket number 7:23-CV-3689 (KMK).

**CONCLUSION**

Plaintiff's complaint is dismissed without prejudice as duplicative of his pending suit *Mulkern v. Lowes, Inc.*, No. 7:23-CV-3689 (KMK) (S.D.N.Y.).

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<sup>1</sup> In this complaint, Plaintiff also lists Heather McClow as a defendant, though he does not include any allegations about her other than that she worked for Lowes Home Center, LLC. This complaint is being dismissed without prejudice. Insofar as Plaintiff's claims against this employee of Lowes Home Center, LLC, arise out of the same transaction that is the subject of his suit under docket number 7:23-CV-3689 (KMK), he could seek leave to pursue those claims in that action, as permitted under Rule 15 of the Federal Rules of Civil Procedure.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962). Judgment shall enter.  
SO ORDERED.

Dated: August 21, 2023  
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN  
Chief United States District Judge